UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC	)	CASE NO. 1:19-cv-00145
	)	
Plaintiff,	)	JUDGE DAN AARON POLSTER
	)	
v.	)	
	)	
SOUTH UNIVERSITY OF OHIO, LLC, *et al.*	)	
	)	
	)	
Defendants.	)	

DEFENDANTS DREAM CENTER EDUCATION HOLDINGS, LLC, SOUTH UNIVERSITY OF OHIO, LLC, AND ARGOSY EDUCATION GROUP, LLC'S RESPONSE TO PLAINTIFF'S EMERGENCY MOTION FOR THE APPOINTMENT OF A RECEIVER AND ENTRY OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Defendants, Dream Center Education Holdings, LLC ("DCEH"), South University of Ohio, LLC ("SUO"), and Argosy Education Group, LLC, through counsel, hereby state as their response to Plaintiff Digital Media Solutions, LLC's ("DMS's") Emergency Motion for the Appointment of a Receiver and Entry of a Temporary Restraining Order and Preliminary Injunction (the "Motion") that they do not object to this Court granting the Motion, for the reasons set forth herein.

Background

DMS's Motion includes a number of allegations concerning DCEH's financial health. DMS perhaps understates the distress DCEH and its subsidiaries – a number of schools spread across the United States – are experiencing. A full description of DCEH's financial issues is included in the Declaration of Randall Barton, attached as Exhibit A hereto and incorporated by reference.

In summary, DCEH (as the ultimate parent of SUO) purchased three university systems – Argosy, Art Institutes, and South - from Education Management Corp. (“EDMC”) in an acquisition that closed initially in October 2017, with a secondary closing in January 2018. Within 60 days of the final closing and after completing the opening balance sheet audits DCEH discovered that the actual revenues fell far short of the projections provided by EDMC, in an amount in the tens of millions of dollars, while overhead fixed costs were significantly in excess of the EDMC’s representations. DCEH’s efforts to instill best practices organization wide and reduce enormous corporate inefficiencies clearly would not be enough to balance what was now projected to be a substantial operating deficit. DCEH determined that the decline in enrollment and revenue was the result of minimal new program development, vastly reduced marketing efforts prior to sale by EDMC, a gap between curricula and employable skills for a number of programs, and the lack of capital investment in facilities and technology. Those issues exacerbated a disengagement from the local communities. The Universities’ high fixed expenses, principally driven by large leased facilities, caused additional stress by limiting the organizations’ ability to reduce the cost base in line with revenue. Absent some sort of cure, DCEH forecasted an inability to meet all of its financial obligations by December of 2018.

DCEH’s financial woes have resulted in it defaulting on its financial commitments across the country, including sums due a number of landlords, who have started eviction proceedings. The impending cascade of creditor litigation will result in the loss of the schools’ accreditations and their ability to receive Title IV funding. Since DCEH and its schools (collectively the “Universities”) rely almost exclusively on tuition payments, and since a majority of those payments come through federal student loans, the loss of the Title IV funding will force the

Universities to close without delay. Closing the schools immediately will destroy the enterprise value, leaving little money for DMS and DCEH's other creditors.

Closing the schools immediately will also keep DCEH from selling the Argosy Universities, and perhaps SUO, to an interested buyer: Eastern Gateway Community College "EGCC." DCEH has been in active negotiations to sell Argosy to EGCC, an Ohio state institution that wants to use Argosy's facilities to provide career training services to the thousands of workers displaced by GM's closing of its Lordstown, Ohio plant. The Ohio administration officials have made clear, however, that the State will proceed with a purchase only through the mechanism of a receivership, whereby the State will buy the asset free and clear of all claims and liens. The EGCC/Argosy transaction will bring jobs back to Ohio, provide an avenue for thousands of affected GM employees to find new work, and protect the taxpayers who would otherwise bear the cost of the unemployment benefits.

DCEH, SUO, and Argosy agree that the imposition of a receivership serves to protect all stakeholders: the students, creditors, and taxpayers. Accordingly, DCEH, SUO, and Argosy agree that Plaintiff's Motion should be granted.

Dated: January 18, 2019

Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF SERVICE

The foregoing was electronically filed this 18th day of January, 2019. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Robert T. Glickman
Robert T. Glickman (0059579)

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC	)	CASE NO. 1:19-cv-00145
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v.	)	
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SOUTH UNIVERSITY OF OHIO, LLC, *et al.*	)	
	)	
Defendants.	)	

DECLARATION OF RANDALL BARTON IN SUPPORT OF SOUTH UNIVERSITY OF OHIO, LLC'S, DREAM CENTER EDUCATION HOLDINGS LLC'S, AND ARGOSY EDUCATION GROUP, LLC'S RESPONSE TO PLAINTIFF DIGITAL MEDIA SOLUTIONS' EMERGENCY MOTION FOR THE APPOINTMENT OF A RECEIVER AND ENTRY OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I, Randall Barton, hereby declare and affirm the following, under penalty of perjury:

1. I am over twenty-one (21) years of age and otherwise competent to testify as to the matters set forth herein. I have personal knowledge of the matters set forth herein.

2. I am Chairman of the Board and Chief Development Officer of Dream Center Education Holdings LLC ("DCEH"). I am also Manager of South University of Ohio, LLC ("SUO"), as well as DCEH's other wholly-owned subsidiaries. As such, I oversee the corporate governance of SUO and its contractual agreements with third parties and other enterprises. I perform the same services for DCEH's other wholly-owned subsidiaries.

3. I am submitting this Declaration in support of DCEH's and SUO's Response to Plaintiff's Emergency Motion for the Appointment of a Receiver and for a Temporary Restraining Order and Preliminary Injunction. (the "Motion")

4. DCEH is the holding company for SUO and two university systems: Argosy Universities and a group of Art Institutes (collectively, the "Universities").

5. DCEH and its wholly-owned subsidiaries'[1] revenue flow almost exclusively from tuition and fees paid by its students – a significant majority of whom utilize federal grants and student loans provided under the Higher Education Act of 1965, 20 U.S.C. §1001 *et seq.* The Universities pride themselves on serving what might be deemed non-traditional students like unemployed (or underemployed) adults who are seeking to obtain particularly marketable job skills to gain new careers with higher wages.

6. In 2017, DCEH purchased the Universities from Education Management Corp. ("EDMC"). DCEH's purchase of the Universities closed initially in October 2017, with a secondary closing in January 2018. Within 60 days of the final closing and after completing the opening balance sheet audits DCEH discovered that the actual revenues fell far short of the projections provided by EDMC, in an amount in the tens of millions of dollars, while overhead fixed costs were significantly in excess of the EDMC's representations. DCEH's efforts to instill

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[1] DCEH's subsidiaries include The DC Art Institute of Raleigh-Durham LLC, The DC Art Institute of Charlotte LLC, DC Art Institute of Charleston LLC, DC Art Institute of Washington LLC, The Art Institute of Tennessee – Nashville LLC, AiTN Restaurant LLC, The Art Institute of Colorado LLC, DC Art Institute of Phoenix LLC, The Art Institute of Portland LLC, The Art Institute of Seattle LLC, The Art Institute of Pittsburgh, DC LLC, The Art Institute of Philadelphia, DC, LLC, DC Art Institute of Fort Lauderdale LLC, The Illinois Institute of Art LLC, The Art Institute of Michigan LLC, The Illinois Institute of Art at Schaumberg LLC, DC Art Institute of Phoenix, LLC and its direct subsidiaries the Art Institute of Las Vegas LLC, the Art Institute of Indianapolis, LLC, and AiIN Restaurant LLC; Dream Center Argosy University of California LLC and its direct subsidiaries, Argosy Education Group LLC and AU Student Funding, LLC; Dream Center Education Management LLC; and, South University of Michigan LLC (collectively "DCEH and its subsidiaries").

best practices organization wide and reduce enormous corporate inefficiencies clearly would not be enough to balance what was now projected to be a substantial operating deficit. DCEH determined that the decline in enrollment and revenue was the result of minimal new program development, vastly reduced marketing efforts prior to sale by EDMC, a gap between curricula and employable skills for a number of programs, and the lack of capital investment in facilities and technology. Those issues exacerbated a disengagement from the local communities. The Universities' high fixed expenses, principally driven by large leased facilities, caused additional stress by limiting the organizations' ability to reduce the cost base in line with revenue. Absent some sort of cure, DCEH forecasted an inability to meet all of its financial obligations by December of 2018.

7. By spring of 2018 DCEH determined that the Universities projected an estimated operating loss of $38 million in Fiscal Year 2018 (compared to a surplus of $30 million represented by EDMC), $64 million in fiscal year 2019, and nearly $69 million in fiscal year 2020. The single largest expense forecasted was employee compensation, which makes up half of total operating revenues each year. The next largest single expense is rent, which had been projected to grow from $44 million in fiscal year 2017 to $51 million in fiscal year 2020. The Universities' hoped-for moderate new student growth of 3% per year would not make the Universities self-sustaining through fiscal year 2020.

8. DCEH's board of directors, management, consultants and legal advisors began diligently working to determine how best to address the sudden enormous problem it now faced. After extensive analysis, it identified more than thirty individual campuses to be closed (the "Teach-out Schools"). These campuses represented enormous operating losses, underutilized real estate and weak markets for the programs being offered. DCEH worked with accreditors and the U.S

Department of Education ("DOE") to develop an orderly plan to wind down those campuses and allow students to graduate, transfer to another DCEH campus with a 50% scholarship or be placed at another institution to complete their program (a process commonly called a "teach-out"). Each of those schools, SUO included, is operating under an Amended Temporary Provisional Program Participation under which those schools continue to remain eligible for DOE funding so long as certain conditions are met. Closing the Teach-out Schools is projected to eliminate an estimated operating loss of $64 million in fiscal year 2019, and also avoid a needed capital expenditure of $8.7 million. It is estimated that the last of the Teach-out Schools will close by December 31, 2020.

9. SUO, which is a Teach-out School, is currently operating under an Amended TPPPA entered into with the DOE on August 20, 2018.

10. While it would have been best to close the Teach-out Schools on an orderly basis, with funding matching closing expenses, the DOE limited SUO's ability to pay its rent payments to Plaintiff. The Amended TPPPA provided that the federally provided funds could be paid to Plaintiff for rent obligations only through October 2018 and no later even though the campus Teach-Out extended beyond that time. As a result, SUO defaulted on its rent payment due December 1, 2018 and additional charges due under its lease. Absent further authorization from the DOE and allocation of funds sufficient to pay its rent and other obligations to operate SUO's campus in Warrenville Heights, Ohio, the campus, and the other similarly situated Teach-out Schools around the country, will be forced to close before their students are able to complete their courses of study. Compounding the difficulties faced by SUO are a series of restructuring actions instituted by DCEH and its school systems in late December and early January 2019,

which has resulted in an interruption of the flow of federal funds to SUO, DCEH, and the Teach-Out Schools.

11. DCEH and the Universities are experiencing a series of adverse actions filed by landlords, other creditors and vendors and are not current with dozens of commercial lenders (the "Secured Lenders") that hold security interests in the assets of SUO and other affiliates. SUO believes that adverse actions against the Universities and the cascading shutdowns could trigger the termination of funding by the DOE and/or loss of accreditation by applicable accreditation agencies with jurisdiction over the Universities. The inevitable result will be the termination or a substantial disruption in the students' ability to continue and then complete their respective courses of study, the diminution of the value of the DCEH and Universities' assets, and significant harm to all stakeholders including the taxpayers who will bear the financial brunt of the forgiven student loans.

12. If allowed to proceed in an orderly fashion through receivership, the Universities will follow the teach-out protocols to end operations at the Teach-out Schools, thereby protecting the students. DCEH is also actively negotiating with a number of buyers to sell those schools that will remain (the "Go-forward Schools"). One of those suitors, Eastern Gateway Community College ("EGCC"), an Ohio state educational institution, has indicated an interest in purchasing Argosy and possibly South Universities' Cleveland campus as going concerns free and clear of all liens, claims and interests. The Ohio Attorney General's office has retained special counsel to represent the interests of EGCC in the negotiations with DCEH. Those negotiations are ongoing.

13. Like most of its peers in the career education business, the Universities' student populations have fallen over the course of the last few years. Given that the Universities' revenue

is derived almost exclusively from student tuition payments (often financed through federal assistance), the declining enrollment has obviously and negatively affected the Universities' and DCEH's financial condition. The problem has grown bad enough that the Universities are no longer able to remain current on their financial obligations. DCEH's failure to pay its vendors, which serves as the basis for Plaintiff's complaint, is an example of those failures manifesting themselves. DCEH has therefore focused its efforts on determining how best to preserve its ability to serve its students and meet as many of the obligations of its creditors – Plaintiff included – as possible.

14. As of late December, DCEH and its subsidiaries' trade creditors were owed $41 million. As of late December, the Universities had rent of $10,950,777 due and outstanding on 69 properties across the country. The Universities have received at least 15 default notices from landlords. And the Universities currently face 9 separate eviction actions across the country.

15. As part of DCEH's purchase of the Universities, it entered into a $55 million senior secured credit and guarantee agreement with a consortium of ten lenders, administered by U.S. Bank National Association (the "Credit Agreement"). As of late December 2018, the amount due under the agreement was $46.1 million. The debt is divided across two tranches – called "Tranche A" and "Tranche C" -under the controlling document. Tranche A was debt utilized to facilitate the closing of DCEH's purchase of the Universities from EDMC, and provide working capital to the newly formed organization. Tranche C was cash collateral held by the Dream Center Foundation, to be used once per year by DCEH for regulatory purposes, specifically to improve its cash position to aid in the calculation of the DOE financial responsibility score. The cash collateral was returned to the Tranche C lenders on August 31, 2018, who then entered into a limited forbearance agreement with DCEH and the Universities,

whereby they would not sweep the teach-out monies provided by DOE under the Amended TPPPAs.

16. In the short time it has owned the Universities, DCEH has graduated more than 15,000 students, kept 7,500 jobs in place, and given 1,000 employees of the Teach-out Schools a reasonable severance and long lead time to find new employment. It has also worked closely with DOE to keep it appraised of DCEH and the Universities' status and plans. It has worked with the accreditors to attempt to avoid the loss of any accreditations. DCEH has spent considerable time determining how best to proceed for all concerned. In broad terms, it became clear that the Universities' students and creditors would be best served if DCEH was able to focus on four broad areas:(1) promoting student affordability by changing and lowering the education cost structure; (2) minimizing its footprint and focusing more on each remaining campus; (3) reducing corporate overhead and non-student support services; and, (4) pushing new product development to the forefront, including high potential, low employment skills based Nano courses.

17. DCEH pursued a strategy for the more viable Art Institutes, originally twelve[2] campuses but later reduced to nine campuses, by negotiating a series of agreements with Studio Enterprise Manager, LLC ("Studio"), an affiliate of Colbeck Capital LLC with extensive experience in operating institutions offering performing arts programs, under which Studio will be providing technology, management and support services (enrollment, marketing, student

[2] South entered into a new $25 Million 20-year term loan agreement with the lenders and the Art Institutes were relieved of any debt. DCEH, Argosy University and the Teach-out Schools, on the other hand, remain responsible for remaining obligations under the Credit Agreement, which include a nearly $10 million make whole premium on the Tranche C Term Loan, $15 Million remaining on the Tranche A Term Loan, past due interest payments totaling over $1.1 Million, ongoing interest, and potential guaranty exposure for all amounts paid out by the DOE for teach-out costs from the EDMC $92.3 Million letter of credit, which was guaranteed under the Credit Agreement.

services, and career services) that will allow this group of Art Institutes to maintain operations and build enrollments in their local communities. Just days after DCEH and these Art Institutes entered into these agreements in December and while DCEH was waiting on the DOE to deliver previously approved funds to defray costs already incurred on the ongoing teach-out processes at the Teach-out Schools, the DOE working in concert with secured creditors and DCEH determined that, given the financial condition of DCEH and its three University systems, control of two of the University systems – Dream Center South University, LLC ("South") and the nine Art Institutes – would be transferred to an independent nonprofit foundation not affiliated with DCEH, all three University systems would enter into managed services agreements with Studio that would be supported through a technology services and license agreement with DCEH (based on its shared information technology software and third party contracts), the obligations under the 2017 credit agreement should be restructured to lessen debt for South and the Art Institutes, and Title IV funds for all three University systems should be managed through the oversight of Studio. All of these sweeping changes were carried out over the course of less than two weeks with a closing on January 7, 2019. Predictably, the mechanics of implementing these sweeping changes, particularly the movement of Title IV funds, have not kept up with the pace at which these changes were made. This further delay in funding to DCEH and SUO has only more severely compounded the financial crisis they and all of the teach-out Schools face and increased the need for relief from this Court.

18. DCEH's limited options make it clear that a wind-up of its operations and restructuring of its debts and operations to facilitate a sale of Argosy, and possibly some of the Teach-out Schools, through a federal receivership are the only way it can preserve the ability of the Go-forward Schools to serve their students and the Teach-out schools to fulfill their

regulatory requirements to the students, while permitting DCEH to maximize the value of the entire enterprise for the benefit of its stakeholders. Absent the protections provided by a receiver, the requested stay, and the requested injunction, DCEH will not be able to access the required funding to continue operations and the Universities will not be able to complete the teach-out within the Teach-out Schools or reorganize or sell the Go-forward Schools. The more typical resolution – a bankruptcy filing – is not possible because the Higher Education Act specifically defines an "eligible institution" as one that has not filed for bankruptcy. 20 U.S.C. §1002(a)(4)(A).

19. One element of the restructuring plan is to sell the Argosy schools to a purchaser who has already expressed interest – EGCC. That interest is, however, contingent upon its ability to buy the schools free and clear of all creditor liens, claims and interests except certain creditor claims that would be assumed as a part of the proposed purchase, and after the State of Ohio has approved the transaction. The State of Ohio's approval of the transaction is conditioned on a sale approved through a federal receivership. EGCC may well use either the Argosy structure, or perhaps the SUO one, to open a campus to focus on the auto workers that are expected to be displaced following General Motors proposed closure of the Lordstown, Ohio plant. Allowing those workers to enjoy federally subsidized classes to learn new job skills will save countless families, and countless tax dollars otherwise spent on unemployment and welfare programs.

20. For the reasons set forth herein and in the Motion, the Motion should be granted.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief. Executed the 17 day of January, 2019 in Palm Desert, California.

Randall Barton

Randall Barton